

STATE OF TEXAS           §  
   §  
COUNTIES OF ELLIS       §  
AND DALLAS               §

## **INTERLOCAL COOPERATION AGREEMENT**

This Agreement is by and among the City of Midlothian, Texas (“MIDLOTHIAN”) and the City of UNIVERSITY PARK, Texas (“UNIVERSITY PARK”), (collectively referred to as the “PARTIES”) acting by and through their authorized officers.

### **RECITALS:**

**WHEREAS**, this AGREEMENT is authorized by Chapter 791 of the Texas Government Code and Subchapter F, Chapter 271, Texas Local Government Code; and

**WHEREAS**, Section 271.102 of the TEX. LOC. GOV’T CODE authorizes a local government to participate in a Cooperative Purchasing Program with another local government or a local cooperative organization; and

**WHEREAS**, a local government that purchases goods and services pursuant to a Cooperative Purchasing Program with another local government satisfies the requirement of the local government to seek competitive bids for the purchase of the goods and materials; and

**WHEREAS**, the PARTIES desire to enter into a Cooperative Purchasing program which will allow each party to purchase goods and services from vendors under contracts made by one or more of the PARTIES herein pursuant to Subchapter F, Chapters 271 of the TEX. LOC. GOV’T CODE; and

**WHEREAS**, each party that purchases goods and services pursuant to this AGREEMENT shall pay for such goods and services from current revenues available to such party;

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained herein, the PARTIES agree as follows:

### **ARTICLE I PURPOSES**

1. The purpose of this AGREEMENT is to establish a Cooperative Purchasing Program among the PARTIES which will allow each party to individually purchase goods and services from vendors under a contract made pursuant to this AGREEMENT. The purpose of this AGREEMENT is to allow individual parties to purchase goods and services from current bids and/or contracts established by any party to this AGREEMENT. All bids and/or contracts established by any party to this AGREEMENT shall be awarded in compliance with the procedure and requirements for competitive bidding and proposals in Chapter 252, Texas Local Government Code.

## **ARTICLE II WITHDRAWAL OF PARTY**

2. Any party may withdraw and terminate its participation under this AGREEMENT by providing thirty (30) days prior written notice to each of the other PARTIES. In the event of withdrawal of a party, this AGREEMENT shall continue in full force and effect so long as there are at least two or more parties to this AGREEMENT.

## **ARTICLE III ADDITIONAL PARTIES**

3. Additional units of local government including counties, municipalities, special districts, school districts, junior colleges, regional planning commissions or other political subdivisions of the State may become a party to this AGREEMENT and thereby participate in the Cooperative Purchasing Program established herein by an appropriate amendment to this AGREEMENT approved by the governing body of each of the PARTIES.

## **ARTICLE IV TERMINATION**

4. This AGREEMENT may be terminated with the mutual written consent of all parties.

## **ARTICLE V PURCHASING COMMITTEE**

5. There is hereby established a Purchasing Committee (the "COMMITTEE") consisting of the person responsible for the purchasing function for each party or other person designated by each party to act under the direction of, and on behalf of, that party in all matters relating to the Cooperative Purchasing Program established herein. The COMMITTEE may adopt rules and procedures for the conduct of its business in the furtherance of the Cooperative Purchasing Program.

6. The COMMITTEE on an annual or other basis as determined by the COMMITTEE from time to time shall determine the goods or services that are subject to the Cooperative Purchasing Program established herein.

7. The COMMITTEE shall develop terms and conditions to be incorporated in the advertisement for competitive bids and for contracts awarded pursuant to this Cooperative Purchasing Program including but not limited to the following:

- a. Each party to this AGREEMENT shall be entitled to individually purchase goods or services directly from the vendor by making payments directly to the vendor;

- b. Each party shall be entitled to individually order or request the goods and services separately and be separately invoiced by the vendor;
- c. Each party that purchases goods or services from a vendor shall be liable only for the goods or services ordered and received by such party;
- d. The purchase of goods or services from a vendor pursuant to a contract awarded under the Cooperative Purchasing Program does not create any joint or concurrent liability for any party that does not purchase such goods or services; and
- e. Any dispute or claim arising between or among the vendor and any party hereto which purchases goods or services from such vendor shall be the sole responsibility of and be resolved by that individual party and the vendor.

8. No party hereto shall be responsible for a vendor's compliance with the provisions relating to the quality of items and terms of delivery, such being the sole responsibility of the party (or parties) purchasing goods or services directly from a vendor awarded a contract pursuant to this Cooperative Purchasing Program.

9. Nothing in this AGREEMENT shall prevent any party from advertising for and awarding contracts for goods or services separate and apart from this Cooperative Purchasing Agreement, nor shall any party be obligated to purchase goods or services from a contract awarded pursuant to this AGREEMENT.

10. Each party shall through their designated representative cooperate to provide a program for the purchase of goods and services commonly utilized by the PARTIES, and under such program may purchase goods or services from vendors under present and future contracts with any party hereto.

11. Each party will enter into individual contracts with the vendors under the Cooperative Purchasing Program provided under this AGREEMENT. Each party shall be individually responsible for payment directly to the vendor and for the vendor's compliance with all conditions of delivery and quality of purchased items under such individual contracts.

## **ARTICLE VI RELEASE AND INDEMNIFICATION**

12. Each party hereto waives all claims against, releases, and otherwise holds the other PARTIES, their officials, officers, agents and employees in both their public and private capacities, harmless from any and all liability, claims, suits, demands, losses, damages, attorney's fees (including all expenses of litigation or settlement), or causes of action of any kind which may arise by reason of an injury to or death of any person or for a loss of, damage to, or loss of use of any property arising out of or in any way related to this AGREEMENT and/or the Cooperative Purchasing Program, including any acts or omissions of the PARTIES' respective officials, officers, agents or employees, relating to or arising out of the performance of this AGREEMENT, except when any such claim or demand arises or results from the intentional tort and/or gross negligence of any party hereto. In the event any claim or demand arises out of or results from the intentional tort and/or gross negligence of a party hereto, then in that event, the party guilty of such intentional tort and/or gross negligence shall indemnify and hold harmless the other PARTIES who are innocent of any intentional tort or gross negligence of and from all liability, claims, suits, demands, losses, damages and attorney's fees resulting from the intentional tort and/or gross negligence.

13. In the event of a claim or case which subjects the PARTIES to joint liability and which does not result or arise from the intentional tort and/or gross negligence of any party hereto, it is the agreement of the PARTIES that each shall be responsible for one-half (1/2) of the payment of any and all liability, claims, suits, demands, losses, damages and attorney's fees, including all costs of litigation or settlement. Under such circumstances, in no event shall any party hereto be liable for damages other than for one-half (1/2) of such cost.

14. It is expressly understood and agreed that, in the execution of this AGREEMENT, no party waives nor shall be deemed hereby to waive any immunity or defense that would otherwise be available to or against claims arising in the exercise of governmental functions relating hereto or otherwise. By entering into this AGREEMENT, the PARTIES do not create any obligations, expressed or implied, other than those set forth herein, and this AGREEMENT should not create any rights in any parties not signatory hereto.

## **ARTICLE VII MISCELLANEOUS**

15. **Relationship of Parties:** This AGREEMENT is not intended to create, nor should it be construed as creating, a partnership, association, joint venture or trust.

16. **Notice:** Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, or by hand-delivery or facsimile transmission addressed to the respective party at the address set forth opposite the signature of the party.

17. **Severability:** In the event any one or more of the provisions contained in this AGREEMENT shall for any reason be held to be invalid, illegal, or unenforceable in any respect,

such invalidity, illegality, or unenforceability shall not affect the other provisions, and the AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this AGREEMENT.

18. **Governing Law:** The validity of this AGREEMENT and any of its terms and provisions as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this AGREEMENT shall be in the State District Court of Ellis County, Texas.

19. **Entire Agreement:** This AGREEMENT represents the entire agreement among the parties with respect to the subject matter covered by this AGREEMENT. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this AGREEMENT.

20. **Recitals:** The recitals to this AGREEMENT are incorporated herein.

21. **Counterparts:** This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF MIDLOTHIAN, TEXAS

By: \_\_\_\_\_  
MAYOR

ATTEST:

By: \_\_\_\_\_  
CITY SECRETARY

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF UNIVERSITY PARK, TEXAS

By: \_\_\_\_\_  
OLIN LANE, MAYOR

ATTEST:

By: \_\_\_\_\_  
CHRISTINE GREEN, CITY SECRETARY

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2017.